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8 UNITED STATES DISTRICT COURT  
9 CENTRAL DISTRICT OF CALIFORNIA  
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11 ANDRES LARRY LUNA,  
12 Petitioner

13 v.

14 M.E. SPEARMAN,  
15 Respondent.  
16  
17

Case No. CV 13-7549-VAP (GJS)

**ORDER ACCEPTING FINDINGS  
AND RECOMMENDATIONS OF  
UNITED STATES MAGISTRATE  
JUDGE**

18 Pursuant to 28 U.S.C. § 636, the Court has reviewed the Second Amended  
19 Petition (“Petition”) and all pleadings, motions, and other documents filed in this  
20 action, the Report and Recommendation of United States Magistrate Judge  
21 (“Report”), and Petitioner’s Objections to the Report. The Court has conducted a de  
22 novo review of those matters to which objections have been stated.

23 In his Objections, Petitioner asserts that the Report contains a factual error at  
24 page 3, lines 13-15. (Objections at 1-2: “Petitioner specifically disagrees that he  
25 ever admitted that his prior vehicular manslaughter conviction did result in any  
26 personal infliction of great bodily injury, as stated in [the Report].”) In fact, as the  
27 Report correctly noted, Petitioner did make such an admission. (See Second  
28 Amended Petition, Ex. 05, Dkt. 28-2, p. 10 – Transcript of November 4, 2011)

1 hearing in L.A.S.C. No. BA386138 at 17 (Petitioner's plea hearing, in which he  
2 stated, "Yes, I do" when asked "Do you admit that, in the commission of that crime  
3 [vehicular manslaughter], you personally inflicted great bodily injury on a person  
4 other than an accomplice?").)

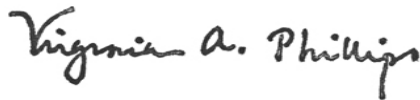
5 Petitioner also contends that the United States Magistrate Judge mischaracterized  
6 his first habeas claim. The Court finds that the Report fairly and appropriately  
7 construed and characterized Ground One of the Second Amended Petition. To the  
8 extent that Petitioner now is attempting to reformulate the claim in a different and  
9 possibly unexhausted manner, the Court declines to consider this new claim.

10 The Court has considered Petitioner's objections to the Report's analyses of  
11 Grounds Two and Three of the Second Amended Petition and finds that they do not  
12 state any basis for rejecting the Report. To the extent that Petitioner now is  
13 attempting to state a new, and possibly unexhausted, Sixth Amendment claim within  
14 his Objections, the Court declines to consider any such new claim.

15 Having completed its review, the Court accepts the findings and  
16 recommendations set forth in the Report. Accordingly, **IT IS ORDERED** that: (1)  
17 the Petition is DENIED; and (2) Judgment shall be entered dismissing this action  
18 with prejudice.

19 **LET JUDGMENT BE ENTERED ACCORDINGLY.**

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21 Dated: April 21, 2016



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22 VIRGINIA A. PHILLIPS  
23 UNITED STATES DISTRICT JUDGE  
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